

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	§	
	§	Case No. 15-34736
Diverse Energy Systems, LLC,	§	
	§	(Chapter 11)
Debtor.	§	

**OBJECTION OF SPUNKY FLAT LAND COMPANY AND FWT LEASING COMPANY
TO DEBTOR’S MOTION TO SELL CERTAIN ASSETS OF THE ESTATE FREE AND
CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS
AND FOR OTHER RELATED RELIEF**

COMES NOW Spunky Flat Land Company (“SFLC”) and FWT Leasing Company, now known as, CKC Logistics Company (“FWT” or “CKC”) (collectively “Creditors”) and file this Objection (“Objection”) to Diverse Energy Systems, LLC’s (the “Debtor” or “Diverse”) *Motion to Sell Certain Assets of the Estate Free and Clear of Liens, Claims, Encumbrances and Other Interests* (the “Sale Motion”) [Docket No. 178], and in support thereof would respectfully show as follows:

I. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

1. On September 1, 2013, SFLC and ITS entered into a commercial lease agreement whereby ITS agreed to lease real property owned by SFLC for a term of 36 months (the “Real Property Lease”). On September 1, 2013, FWT and ITS entered into a commercial lease agreement whereby ITS agreed to lease equipment owned by FWT for use in its business operations for a period of eleven (11) months with an option to extend for an additional twelve (12) months (the “Equipment Lease”). A copy of the Equipment Lease is attached hereto as Exhibit A. The real property and equipment are located in Katy, Texas.

2. On September 7, 2015 (the “Petition Date”), the Debtor filed its voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code (the “Bankruptcy Code”), thereby initiating its Bankruptcy Case and creating its bankruptcy estate (the “Estate”).

3. The Debtor continues to operate its business and to manage its Estate as a debtor-in-possession. ITS Engineered Systems, Inc. (“ITS Debtor”) filed their respective chapter 11 bankruptcy petitions on April 17, 2015, which are jointly administered under case no. 15-32145.

4. On August 10, 2015, the ITS Debtor commenced (i) an adversary proceeding against FWT (the “FWT Adversary”); and (ii) an adversary proceeding against SFLC (the “SFLC Adversary,” and, together with the FWT Adversary, the “Adversaries”). The ITS Debtor, FWT, and SFLC have agreed to joint discovery plans in the Adversaries and are currently proceeding pursuant to their terms.

5. On November 5, 2015, the Debtor filed the Sale Motion. By the Sale Motion, the Debtor sought an order establishing bidding procedures and to sell substantially all of the Debtor’s assets.

6. The Debtor asserts that it is the owner of the real property subject to the Real Property Lease and the equipment subject to the Equipment Lease, and proposed to sell it free and clear pursuant to 11 U.S.C. § 363(f)(4). Alternatively, the Debtor proposed to sell whatever interest it has in SFLC’s land and FWT’s equipment.

7. The Debtor takes the position in the Sale Motion that selling SFLC’s land and FWT’s equipment free and clear of all interests is permitted under 11 U.S.C. § 363(f)(4) because either (1) FWT and SFLC – along with Icon Bank (“Icon”) – will consent to such a sale or (2) because of the ongoing adversary proceedings.

8. On November 13, 2015, FWT and SFLC filed an objection to the Sale Motion based upon their lack of consent to such a sale of their interests free and clear of any other encumbrances [Docket No. 196]. To the extent necessary or required, SFLC and FWT incorporate that objection herein.

9. On January 17, 2016, the Debtor and ITS Debtors filed a notice cancelling the scheduled auction, presumably because no other qualified bid was received by the bid deadline established by the Court. [Docket No. 345]. On January 15, 2016, the Debtor also filed (i) a redline of the proposed asset purchase agreement between the Debtor, ITS Debtors and Cimarron Acquisition Co. (the “Proposed Buyer” or “Cimarron”) (the “Proposed Redline APA”); and (ii) schedules to the Proposed Redline APA (the “Proposed Redline APA Schedules”).

II. OBJECTION & RESERVATION OF RIGHTS

10. Pursuant to the Equipment Lease, the Debtor leases from FWT all of the equipment on Schedule A of the Equipment Lease, which is, upon information and belief, all of the equipment located in the Katy, Texas facility. *Equipment Lease* at 1.01 and Schedule A.

11. The Proposed Redline APA purports to exclude the purchase of the real property and equipment located in Katy, Texas at the facility and property that is subject to the Real Property Lease. *Proposed Redline APA* at p. 6. However, the Proposed Redline APA Schedules include equipment that is subject to the Equipment Lease, which cannot, and should not, be sold without the consent of CKC because CKC owns all such equipment. Therefore, any order approving a sale of assets to the Proposed Buyer, or any other buyer, should exclude all equipment listed and scheduled in the Equipment Lease until the Court resolves any ownership dispute.

12. FWT, now CKC, and SFLC reserve all rights to amend this Objection and raise any other and further arguments and objections to the Sale Motion.

III. PRAYER

WHEREFORE, PREMISES CONSIDERED, FWT, now CKC, and SFLC respectfully requests that the Court enter an order: (i) denying the Sale Motion; and (ii) providing CKC and SFLC with such other and further relief as to which they have shown themselves to be justly entitled.

RESPECTFULLY SUBMITTED on this 19th day of January, 2016.

MCCATHERN, PLLC

By: /s/ Eric M. Van Horn

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**COUNSEL FOR FWT LEASING COMPANY
AND SPUNKY FLAT LAND COMPANY**

CERTIFICATE OF SERVICE

I hereby certify that on January 19, 2016, the foregoing Objection was served electronically on all parties receiving service via the Court's CM/ECF system.

By: /s/ Nicholas Zugaro
Nicholas Zugaro